IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.15028 of 1999

Between:

N.Arvind Reddy S/o Venkata Reddy
H.No. 7-4-22/9/B, Bangargadda,
Miryalaguda, Nalgonda District.

..... PETITIONER

AND

1 The Dy.Inspector General of Police, Central Reserve Police Force, Gandhinagar, Gujarat.
2 The Commandant, 24 BN, Central Reserve Police Force, Bhawan, Delhi-3.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction more particularly one in the nature of Writ of Mandamus declareing the Proceedings No.BXIII-7/98-DA-II, DT 12-3-99 confirming the Proceedings No. P-V III-7/96-98 Estt-II dt 31-8-98 as arbitrary, illegal & contrary to the CRPF Act 1949 and consequently direct the respondents to reinstate the petitioner with all consequential benefits including back wages etc.

Counsel for the Petitioner: Mr. C.YADAGIRI

Counsel for Respondents: Mr. S.S. VARMA

The Court made the following :

ORAL ORDER:

This Writ Petition is filed seeking a Mandamus to declare the Proceedings dated 12-3-1999 of the 1st respondent confirming the Proceedings dated 31-8-1998 of the 2nd respondent as arbitrary, illegal and contrary to the Central Reserve Police Force Act,1949 and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It is the case of the petitioner that he was appointed as Constable in the CRPF. After completion of training, he was posted at 24 Battalion, Itanagar, Arunachal Pradesh. He was discharging his duties to the utmost satisfaction of his superiors. There were no complaints whatsoever against him. While the matter stood thus, he applied for Earned Leave with effect from 12-2-1996 to 11-4-1996. He reported for duty on 12-4-1996. In the meanwhile, there was some problem in his family and, therefore, he submitted a representation to discharge him from the service of CRPF. The authorities have not taken any action on the said representation. During his stay at his village, her mother fell seriously ill and nobody was there to look after her. He is the only son, who had to look after her, take her to hospital etc. Therefore, he overstayed the leave. For this, he received a communication dated 26-7-1997 that enquiry was being conducted as to his overstayal of leave and one M.H.Kazi, Officer Commanding was appointed as Enquiry Officer. Immediately after receipt of the

letter, he reported for duty and he was allowed to join duty with effect from 23-9-1997 and worked upto 31-8-1998 i.e. till the impugned order was passed. The Enquiry Officer as well as the disciplinary authority held that he was absent without any proper reason. However, the legal action as to his arrest was dropped. According to the petitioner, firstly, one M.H. Kazi was appointed as Enquiry Officer. Thereafter, Ratnakar Singh, Deputy Commandant was appointed for conducting the enquiry into the charges levelled against him as to overstayal of leave. There was no necessity of dispensing with the services of the first Enquiry Officer and then appointing a second Enquiry Officer. This itself is arbitrary and illegal, apart from the fact that even assuming that the charges are proved in full, the punishment imposed is disproportionate to that of the misconduct alleged, particularly in view of the fact that he has rendered 9 years of unblemished service in an interior area like Itanagar. Therefore, the impugned Orders of the respondents are arbitrary and illegal.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is *inter alia* asserted that a complaint under Section 10(m) of the CRPF Act,1949 was lodged by the Officer Commanding F/24 Battalion, CRPF on 14-5-1996 in the Court of Chief Judicial Magistrate to take cognizance of offence and to issue warrant of arrest for the apprehension of the petitioner, since he remained absent for more than 529 days without sufficient cause and valid permission from the competent authority. Accordingly, warrant of arrest was issued against the petitioner addressed to the Superintendent of Police, Nalgonda district on 17-5-1996 and Court of Inquiry was conducted, which was presided over by K.N. Singh, Assistant Commandant on 16-7-1996 to enquire into the circumstances of overstayal of leave of the petitioner from 60 days Earned Leave. The Court of Inquiry was completed on 15-11-1996, as a result of which, he was declared ‘deserted from the Force’ with effect from 12-4-1996. A Departmental enquiry was also ordered on 17-4-1997. One M.H. Quazi was appointed as an Enquiry Officer for conducting enquiry into the matter. When the *ex parte* enquiry was going on, the petitioner reported for duty at his own on 22-9-1997 after overstayal of leave for 529 days. He was produced before the Court. Later, he was released on 23-9-1997. On his arrival, departmental enquiry was conducted on regular basis and proceedings were concluded on 18-10-1997 by the Enquiry Officer. The report of the Enquiry Officer was supplied to the petitioner on 10-11-1997 vide letter dated 28-10-1997 giving him 15 days time for submission of his written reply. Petitioner submitted his representation on 12-11-1997. The case was

re-examined and it was revealed that he had brought nothing new in his defence, except his request to bestow mercy on him keeping in view his poor financial condition. A *de novo* enquiry was ordered against him. He was communicated with fresh Articles of Charge vide Memo dated 29-1-1998 and Enquiry Officer was appointed vide Order dated 19-3-1998. The Enquiry Officer conducted regular enquiry on day to day basis and completed the proceedings on 26-7-1998. As a result of finalization of de novo enquiry, taking a lenient, penalty of removal from service was imposed on the petitioner with effect from 31-8-1998 based on gravity of offence committed by him, instead of the punishment of dismissal from service. Therefore, the contention of the petitioner that twice the enquiry was conducted for the very same misconduct is without any substance.

I have given my earnest consideration to the submissions made by the learned counsel on either side and perused the material made available on record.

At the outset, I am of the opinion that absolutely there were no reasons forthcoming as to overstayal of leave by the petitioner for 529 days, except that his mother was ill. However, it is a fact that the petitioner had put on more than eight years continuous service in a remote place like Itanagar, Arunachal Pradesh, which is on the China border. Further, admittedly, the petitioner was sanctioned with 60 days earned leave. Thereafter, in view of the absence of the petitioner, departmental enquiry was ordered. When he himself reported for duty, he was detained and enquiry was conducted and thereafter he was removed from service. The only reason furnished by the petitioner is that his mother was laid up with serious illness and he being the only son, could not leave her and come to the work place for reporting duty. In the overall circumstances of the case, particularly in view of the assertions made in the counter affidavit, I am of the opinion that neither the enquiry conducted by the Department nor the findings arrived at by the Enquiry Officer can be said to be either arbitrary or illegal.

The only question that requires to be considered is whether the punishment imposed on the petitioner is proportionate to that of the misconduct alleged and proved against him. In view of the fact that the petitioner had put in more than eight years of unblemished service in a remote place like Itanagar, Arunachal Pradesh and he had applied for 60 days Earned Leave and thereafter overstayed the leave, may be due to the ill-health of his mother, the petitioner requires to be given one

more opportunity to improve himself. Therefore, this Court is of the opinion that the punishment of removal from service is disproportionate to that of the misconduct alleged and proved against the petitioner. However, in view of the fact that the petitioner was removed from service somewhere in the year 1998 and the Writ Petition is pending for the last more than seven years, it is desirable that the case should be given a quietus here itself. Therefore, the impugned Orders are set aside.

In the result, it is declared that the petitioner is entitled for reinstatement into service, but without any back wages and without any attendant benefits. He is, however, entitled to reckon the service rendered by him in the Force prior to his removal in the year 1998 for the purpose of computation of retiral benefits like pension etc."

The Writ Petition is allowed to the extent indicated above. No order as to costs.

19-7-2005

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this the Tuesday, Nineteenth day of July Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Dy.Inspector General of Police, Central Reserve Police Force, Gandhinagar, Gujarat.
2 The Commandant, 24 BN, Central Reserve Police Force, Bhawan, Delhi-3.

3 2 CD copies.